

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CATHERINE R. TUBERGEN

Case No.

Plaintiff,

Hon.

v

MENARD, INC.,

Defendant.

Frederick J. Boncher (23072)
SCHENK, BONCHER & RYPMA
Attorneys for Plaintiff
601 Three Mile Road N.W.
Grand Rapids, MI 49544
(616) 647-8277

Thomas G. Herman (P27846)
GARAN LUCOW MILLER, P.C.
Attorneys for Defendant
300 Ottawa Avenue N.W., Suite 800
Grand Rapids, MI 49503
(616) 742-5500

**NOTICE OF REMOVAL OF CAUSE TO THE UNITED STATES
DISTRICT COURT WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION**

TO: Frederick J. Boncher
Attorney for Plaintiff

NOW COMES the Defendant, Menard, Inc., by and through its attorneys Garan Lucow Miller, P.C., and in support of this Notice of Removal of Cause to the United States District Court Western District of Michigan, Southern Division, states as follows:

1. That on October 4, 2017, Plaintiff commenced this cause of action in the Circuit Court for the County of Kent, State of Michigan, by filing Plaintiff's Summons and Complaint in which Menard, Inc., a Wisconsin corporation is named as Defendant. (**Exhibit A**)
2. Service of Process was effected by service on Defendant's registered agent on October 16, 2017. (**Exhibit B**).

3. That this action is a suit at common law of a civil nature and the amount involved, inclusive of interest and costs, and upon information and belief, based upon allegations and representations of the Plaintiff, appear to be in excess of the sum of \$75,000. (Plaintiff's Complaint – **Exhibit A**) as Plaintiff alleges:

6. On or about June 18, 2016, Plaintiff was an invitee working for G4S Secure Solutions (USA) Inc., a security company. At that time and place she was required to report to work for security duties at the Menards store on 5555 Clyde Park Ave., SW, Wyoming, Kent County, Michigan, 49509.
7. Plaintiff's work duties for her employer included among other things opening an overhead garage door to allow access to lumber and other building materials for customers of Defendant and checking to ensure goods were properly purchased and were not being taken without authority of Defendant.
8. On the morning of June 18, 2016 while Plaintiff was working at a security booth as part of her job for G4S Secure Solutions (USA), she approved a truck coming in to receive lumber which Plaintiff assumed had been purchased from Defendant. She was thus required to open the overhead garage door at the rear of the Defendant's store to allow access to that part of the store.
9. Previously to June 18, 2016 she had noticed that there were problems with that garage door not operating properly. She complained of problems to Defendant's supervisory employees located at the front desk located in the Menards store and warned of the dangerous nature of the door.
10. On several occasions she had advised Defendant's agents and employees that the door was not operating properly and was very difficult to open and requested that the door be repaired.
11. On the morning of June 18, 2016, Plaintiff assumed that her request for repairs or execution of proper maintenance upon the overhead garage door had taken place.
12. However, when she began to open the garage door she realized it was jammed or sticking and she consequently called the supervisors at the front desk of the Menards store and asked for help to open the door so that the incoming customer driving a truck

could be properly loaded.

13. At that time, her requests for help were ignored, no one came to help her open the door, and she was required to see if she could open the door by herself.
14. As Plaintiff was opening the garage door, she injured her shoulder.
15. The injury suffered by Plaintiff included among other things a severely torn rotator cuff which has now required two surgeries and has been permanently damaged leaving Plaintiff with a disabled right arm.

4. That Defendant, Menard, Inc., shows this Honorable Court that this action involves a controversy between citizens of different states in that:

- (A) Plaintiff, Catherine R. Tubergen, is alleged to be a citizen of Michigan.
- (B) Defendant, Menard, Inc., at the time of the commencement of this action, was, and now is incorporated under the laws of Wisconsin and is not a citizen of the State of Michigan.
- (C) Defendant Menard, Inc., had at the time of commencement of this action, and now has, its principal place of business in the State of Wisconsin, and is not a citizen of the State of Michigan by any reason if its principal place of business.

5. That this notice of removal is filed with this Court within 30 days after receipt by the Defendant, Menard, Inc., on or about October 16, 2017, by service on the Defendant of the Plaintiff's Summons and Complaint. Therefore, this removal is filed as required by 28 USC §1446(b).

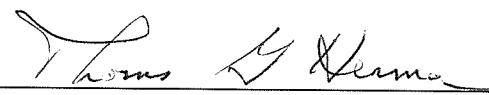
6. That written notice of filing this removal has been given to all adverse parties as required by law and a copy of the Notice of Removal has been filed with the Clerk of the Court for the County of Kent, State of Michigan.

7. That attached is a copy of the process and pleadings that were served upon the

Defendant in this cause (**Exhibit A**).

WHEREFORE, Defendant, Menard, Inc., herein, respectfully prays that this Honorable Court enter its order for removing this cause from the Circuit Court for the County of Kent, State of Michigan, to the United States District Court, Western District of Michigan, Southern Division.

Date: November 3, 2017



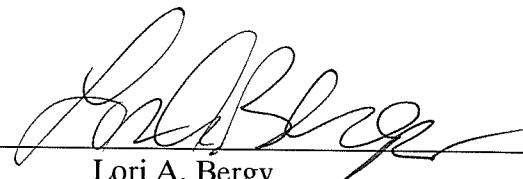
Thomas G. Herman (P27846)
Garan Lucow Miller, P.C.
300 Ottawa Ave., N.W., Ste. 800
Grand Rapids, MI 49503
(616) 742-5500

CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2017, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

and I hereby certify that I have mailed by United States Postal Service the paper to the following:

Frederick J. Boncher
Schenk, Boncher & Rypma
601 Three Mile Road N.W.
Grand Rapids, MI 49544



Lori A. Bergy

EXHIBIT A



Schenk Boncher & Rypma

ATTORNEYS & COUNSELORS

Gary P. Schenk
Frederick J. Boncher
Curtis D. Rypma
Brent W. Boncher
Tyler E. Osburn
OR COUNSEL
Susan J. Knoll

October 12, 2017

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Menard, Inc.
United States Corporation Company
601 Abbott Road
East Lansing, MI 48823

*Re: Catherine R. Tubergen v Menard, Inc.
Case No.: 17-09064-NO*

Dear Resident Agent:

Enclosed please find the following documents regarding the above-entitled matter:

1. *Summons and Complaint;*
2. *Complaint and Jury Demand; and*
3. *Plaintiff's First Set of Requests for Admission Directed to Defendant.*

Thank you.

Very truly yours,

A handwritten signature in cursive ink, appearing to read "Leslie Schullo".

Leslie Schullo
Legal Assistant

Enclosures

S:\LSS500\Tubergen, Catherine\Resident Agent ltr.wpd

Approved, SCAO	Original - Court 1st copy - Defendant	2nd copy - Plaintiff 3rd copy - Return
STATE OF MICHIGAN JUDICIAL DISTRICT 17th JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS AND COMPLAINT	CASE NO. 17- C59064 - NO
Court address 180 Ottawa Ave. NW, Grand Rapids, MI 49503		Court telephone no. (616) 632-5480
Plaintiff's name(s), address(es), and telephone no(s). CATHERINE R. TUBERGEN 1816 Corville Ct. NW Grand Rapids, MI 49504	v Defendant's name(s), address(es), and telephone no(s). MENARD, INC. Headquarters: 5101 Menard Dr. Eau Claire, WI 54703 (715) 876-5911	
Plaintiff's attorney, bar no., address, and telephone no. Frederick J. Boncher (P23072) SCHENK BONCHER & RYPMA 601 Three Mile Rd. NW Grand Rapids, MI 49544 (616) 647-8277		GEORGE JAY QUIST

SUMMONS NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. YOU HAVE 21 DAYS after receiving this summons to file a written answer with the court and serve a copy on the other party or take other lawful action with the court (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued OCT 04 2017	This summons expires JAN 03 2018	Court clerk LISA POSTHUMUS LYONS
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Family Division Cases (The following is information required in the caption of every complaint and is to be completed by the plaintiff.)

This case involves a minor who is under the continuing jurisdiction of another Michigan court. The name of the court, file number, and details are on page _____ of the attached complaint.

There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.

An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in _____ Court.

The action remains is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
------------	-------	---------

Civil Cases (The following is information required in the caption of every complaint and is to be completed by the plaintiff.)

This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.

There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.

A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in _____ Court.

The action remains is no longer pending. The docket number and the judge assigned to the action are:

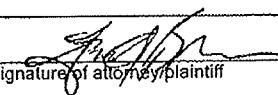
Docket no.	Judge	Bar no.
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VENUE

Plaintiff(s) residence (include city, township, or village) Grand Rapids	Defendant(s) residence (include city, township, or village) Eau Claire, Wisconsin
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Place where action arose or business conducted
Kent County

Oct. 2, 2017
Date


Signature of attorney/plaintiff

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Note to Plaintiff: The summons is invalid unless served on or before its expiration date.

SUMMONS AND COMPLAINT
Case No. 17 - NO

PROOF OF SERVICE

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE **OFFICER CERTIFICATE**

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)

OR

 AFFIDAVIT OF PROCESS SERVER

Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)

 I served personally a copy of the summons and complaint.

I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint, together with _____

List all documents served with the Summons and Complaint

on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complet address(es) of service	Day, date, time

I declare that the statements above are true to the best of my information, knowledge, and belief.

Service fee \$	Miles traveled \$	Fee \$	Signature
Incorrect address fee \$	Miles traveled \$	Fee \$	Name (type or print) Title

Subscribed and sworn to before me on _____, _____ County, Michigan.
Date _____

My commission expires: _____ Signature: _____ Deputy court clerk/Notary public
Date _____

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with _____ Attachments

on _____ Day, date, time _____

on behalf of _____

Signature _____

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

CATHERINE R. TUBERGEN,

Case No. 17 - 09064 - NO

Plaintiff,

HON.

v.

MENARD, INC.,

Complaint and Jury Demand

Defendant.

Frederick J. Boncher (P23072)
SCHENK, BONCHER & RYPMA
Attorneys for Plaintiff
601 Three Mile Road NW
Grand Rapids, MI 49544-1601
(616) 647-8277

**There is no other pending or resolved civil action
arising out of the transaction or occurrence alleged in the complaint.**

COMPLAINT

NOW COMES Plaintiff, Catherine R. Tubergen, by and through her attorneys, Schenk Boncher & Rypma, and in complaint against Defendant, Menard, Inc., states as follows:

1. Plaintiff resides at 1816 Corville Court, NW, Grand Rapids, Kent County, Michigan, 49504.
2. Defendant Menard, Inc. (hereinafter "Menards") is a foreign corporation doing business as a retail store selling a variety of items to the public. Defendant maintains a number of stores throughout the State of Michigan including stores in Kent County, and is thus doing business in Kent County and specifically at its location at 5555 Clyde Park Ave., SW, Wyoming, Kent County, Michigan, 49509.

3. The action which is the subject of this Complaint occurred at Defendant's store located at 5555 Clyde Park Ave., SW, Wyoming, Kent County, Michigan, 49509, on June 18, 2016.
4. The amount in controversy is in excess of \$25,000.
5. Venue and jurisdiction are properly vested in the Circuit Court for the County of Kent.
6. On or about June 18, 2016, Plaintiff was an invitee working for G4S Secure Solutions (USA) Inc., a security company. At that time and place she was required to report to work for security duties at the Menards store on 5555 Clyde Park Ave., SW, Wyoming, Kent County, Michigan, 49509.
7. Plaintiff's work duties for her employer included among other things opening an overhead garage door to allow access to lumber and other building materials for customers of Defendant and checking to ensure goods were properly purchased and were not being taken without authority of Defendant.
8. On the morning of June 18, 2016 while Plaintiff was working at a security booth as part of her job for G4S Secure Solutions (USA), she approved a truck coming in to receive lumber which Plaintiff assumed had been purchased from Defendant. She was thus required to open the overhead garage door at the rear of the Defendant's store to allow access to that part of the store.
9. Previously to June 18, 2016, she had noticed that there were problems with that garage door not operating properly. She complained of problems to Defendant's supervisory employees located at the front desk located in the Menards store and warned of the dangerous nature of the door.
10. On several occasions she had advised Defendant's agents and employees that the door was not operating properly and was very difficult to open and requested that the door be repaired.

11. On the morning of June 18, 2016, Plaintiff assumed that her request for repairs or execution of proper maintenance upon the overhead garage door had taken place.
12. However, when she began to open the garage door she realized it was jammed or sticking and she consequently called the supervisors at the front desk of the Menards store and asked for help to open the door so that the incoming customer driving a truck could be properly loaded.
13. At that time, her requests for help were ignored, no one came to help her open the door, and she was required to see if she could open the door by herself.
14. As Plaintiff was opening the garage door, she injured her shoulder.
15. The injury suffered by Plaintiff included among other things a severely torn rotator cuff which has now required two surgeries and has been permanently damaged leaving Plaintiff with a disabled right arm.
16. At the time of the incident on June 18, 2016, Menards owed a duty to business invitees such as Plaintiff to warn of any dangerous conditions on their premises of which they had knowledge, to maintain its store in a safe and proper manner, to repair any improperly operating fixtures on their property including but not limited to the ill maintained, non-repaired door and take such other care as a reasonable company would take to protect persons including business invitees on their premises.
17. Menards had knowledge of the dangerous and ill maintained door as a result of prior complaints from Plaintiff who occasionally worked at the Menards located at 5555 Clyde Park Ave., SW, Wyoming, Kent County, Michigan, 49509, providing security as an employee of G4S Secure Solutions (USA).

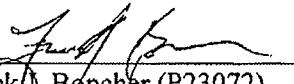
18. Defendant breached its duties to Plaintiff and was negligent by failing to provide her help in opening the door when it was stuck, failing to repair the door after having complaints of problems with the door, failing to properly maintain the door, failing to have additional help available to open the difficult to open door, refusing to inspect and maintain the defective door, failing to warn of problems with the door which Plaintiff had thought had been addressed
19. As a proximate result of the negligence and breach of duties of Menards as set forth above, Plaintiff suffered ongoing substantial pain and suffering, neck problems, arm problems, permanent serious injuries and disability, embarrassment, mortification and physical limitations, surgeries to repair torn rotator cuffs, surgery to implant a ball and socket in her shoulder, multiple tears to her rotator cuff, inability to raise her arm, inability to lift with her arm, a fear of having to undergo further surgical procedures, pain injections into her shoulder (which were unsuccessful), loss of enjoyment of life, push/pull difficulties in engaging in normal activities of life, interference and restrictions in normal activities of life, mental anguish, past wage loss and future loss of earnings, and other damages which may be determined by the finder of fact in this case.

WHEREFORE, Plaintiff prays that this Court award her damages in excess of \$25,000 and such other relief as this Court deems proper.

SCHENK BONCHER & RYPMA

Date: October 2, 2017

By:


Frederick J. Boncher (P23072)
Attorney for Plaintiff

JURY DEMAND

NOW COMES the Plaintiff, by and through her attorneys, Schenk, Boncher & Rypma, and hereby requests a jury trial in this action.

SCHENK, BONCHER & RYPMA

Dated: October 1, 2017

By:


Frederick J. Boncher (P23072)
Attorney for Plaintiff

S:\LS500\Tubergen, Catherine\Complaint.wpd

EXHIBIT B

Andrew McCue

From: sop@cscinfo.com
Sent: Tuesday, October 17, 2017 11:45 AM
To: Andrew McCue
Subject: Notice of Service of Process - Transmittal Number: 17273676



NOTICE OF SERVICE OF PROCESS

Transmittal Number: **17273676**

(Click the Transmittal Number to view your SOP)

Pursuant to client instructions, we are forwarding this summary and Notice of Service of Process.

Entity: Menard, Inc.
Entity I.D. Number: 0033810
Entity Served: Menard, Inc.
Title of Action: Catherine R. Tubergen vs. Menard, Inc.
Document(s) type: Summons/Complaint
Nature of Action: Personal Injury
Court/Agency: Kent County Circuit Court, Michigan
Case/Reference No: 17-09064-NO
Jurisdiction Served: Michigan
Date Served on CSC: 10/16/2017
Answer or Appearance Due: 28 Days
Originally Served On: CSC
How Served: Certified Mail

Sender Information:

Frederick J. Boncher
616-647-8277

Primary Contact:

James Anderson
Menard, Inc.

Electronic copy provided to:

Casey Austin
Carrie Ray
Andrew McCue

Kaycee Krecklow

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the document(s) and taking appropriate action.

261 Little Falls Drive, Wilmington, Delaware 19808-1674
(888) 690-2382 | sop@cscglobal.com